UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMR OF MARICOPA, LLC
Employer/Petitioner

and Case 28-UC-223664

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 2960, AFL-CIO
Union

and

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL I-60, AFL-CIO
Union

and

INDEPENDENT CERTIFIED EMERGENCY PROFESSIONALS, LOCAL R12-170, NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, SERVICE EMPLOYEES INTERNATIONAL UNION
Union

AMR OF MARICOPA, LLC d/b/a AMR; PROFESSIONAL MEDICAL TRANSPORT, INC. d/b/a PMT, LIFE LINE, and AMR; and SW GENERAL, INC. d/b/a SOUTHWEST AMBULANCE and AMR
Employers/Petitioners

and Case 28-RM-234875

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 2960, AFL-CIO
Union

and

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL I-60, AFL-CIO
Union

and

INDEPENDENT CERTIFIED EMERGENCY PROFESSIONALS, LOCAL R12-170, NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, SERVICE EMPLOYEES INTERNATIONAL UNION
Union

DECISION ON REVIEW AND ORDER REMANDING

The Employers/Petitioners' request for review of the Regional Director's Decision and Order is granted as it raises substantial issues warranting review. On review, we affirm the Regional Director's dismissal of the Employers/Petitioners' RM petition but remand the UC petition for further appropriate action.

The three Employers/Petitioners[1] provide ambulance services in Maricopa County, Arizona. All three employ emergency medical service (EMS) and interfacility transfer (IFT) employees. At the time the RM and UC petitions were filed, there were three bargaining units, each containing the respective Employer's EMS and IFT employees and each represented by a different union.[2] The Employer AMR of Maricopa filed a UC petition seeking to reorganize the

[1] Hereinafter "the Employers."

[2] American Federation of State, County and Municipal Employees, Local 2960, AFL-CIO (AFSCME) represents the IFT and EMS employees employed by AMR of Maricopa; International Association of Fire Fighters, Local I-60, AFL-CIO (IAFF) represents the IFT and EMS employees employed by SW General; and Independent Certified Emergency Professionals, Local 412-170, National Association of Government Employees, Service Employees International Union (ICEP) represents the IFT and EMS employees employed by PMT. At the time the UC petition was filed (July 13, 2018), collective-bargaining agreements covering all three units were in effect; the agreement covering the ICEP unit expired on September 4, 2018, and thus only the agreements covering the AFSCME and IAFF units were in effect when the RM petition was filed on January 25, 2019. The agreement covering the IAFF unit subsequently

three existing bargaining units into two units, one comprised of all three Employers' EMS employees, the other of all three Employers' IFT employees. The Employers subsequently jointly filed an RM petition seeking an election in their proposed IFT unit. The Employers argue, in effect, that both petitions should be processed due to the consolidation of their formerly separate operations. The Regional Director dismissed both petitions. The Employers requested review and AFSCME and ICEP filed oppositions.

In dismissing the RM petition, the Regional Director found that the record did not demonstrate that any of the Unions presented a demand to be recognized as the bargaining representative of any employees outside of their own bargaining units. We agree.[3] Board precedent clearly states that a RM petition must be predicated upon a union's claim to be the representative of certain employees and that the voting unit is generally the unit claimed by the union to be appropriate. See, e.g., *Carr-Gottstein Foods Co.*, 307 NLRB 1318, 1319 (1992); *K. Van Bourgondien & Sons*, 294 NLRB 268, 268 & fn. 2 (1989).[4] Here, the Employers have predicated their RM petition on the fact that the recognition clauses covering the three extant units include IFT employees. But all three recognition clauses cover units that include IFT *and* EMS employees and there is no evidence that any of the Unions have made any claim to

expired on June 30, 2019. The agreement covering the AFSCME unit expires on March 31, 2022.

[3] We therefore do not reach the Regional Director's additional findings that the Employers had not established a "good-faith reasonable uncertainty" in the unions' continuing majority status in their respective units and that the RM petition would in any event be barred by the contracts covering the ASFCME and IAFF units.

[4] See also Sec. 102.61(b)(3) of the Board's Rules and Regulations (requiring a RM petition to include a "brief statement setting forth that one or more individuals or labor organizations have presented to the petitioner a claim to be recognized as the exclusive representative of all employees *in the unit claimed to be appropriate*" (emphasis added)).

represent all three groups of IFT employees in a single, separate unit.[5] In the absence of any present claim for recognition in the proposed IFT unit, no question of representation has been raised, and the Regional Director correctly dismissed the RM petition.

In dismissing the UC petition, the Regional Director applied the Board's accretion test and found that the Employers' actions in consolidating their operations did not warrant accreting the EMS and IFT employees currently combined in three separate units (by Employer) into two separate units (by EMS and IFT status). Under that test, the Board will accrete employees to an existing bargaining unit without an election when the employees sought to be added "have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted." *E.I. DuPont de Nemours, Inc.*, 341 NLRB 607, 608 (2003), quoting *Ready Mix USA*, *Inc.*, 340 NLRB 946, 954 (2003). The Regional Director found that the employees in each of the current units retained a separate group identity and did not share an overwhelming community of interest across the unit divide.

Contrary to the Regional Director, we find that this case does not implicate the accretion analysis. As the Regional Director stated, an accretion is the addition of a relatively small group of employees to an existing unit. Here, however, the Employers do not seek to add any employees to any existing unit; instead, they contend that the three existing units have been rendered inappropriate by organizational changes and seek to reconfigure them into two new

[5] The cases cited by the Employer are not to the contrary because in each case at least one union claimed to represent the employees in the newly-merged unit or units. See *Massachusetts Electric Co.*, 248 NLRB 155, 156-157 (1980); *Boston Gas*, 221 NLRB 628, 629 (1975); *Westinghouse Electric Corp*., 144 NLRB 455, 458 (1963). The same is also true of *Martin Marietta Co.*, 270 NLRB 821, 822 (1984), where one of the current bargaining representatives expressed a willingness to represent a combined unit. *Martin Marietta* is also distinguishable because in that case the historical units and the unit sought by the employer were all of the same scope (production-and-maintenance), whereas here the proposed IFT unit would differ in scope from the extant units, which also include EMS employees.

units. That being the case, the applicable inquiry is set forth in *Rock-Tenn Co*., 274 NLRB 772 (1985). Under *Rock-Tenn* and its progeny, the Board will clarify a historical unit where, based on recent, substantial changes, the historical unit no longer conforms to normal standards of appropriateness. See *Armco Steel Co.*, 312 NLRB 257, 259 (1993) (citing *Lennox Industries*, 308 NLRB 1237 (1992); *Ameron, Inc.*, 288 NLRB 747 (1988)). Although this line of cases most typically considers whether a single multilocation unit should be clarified into two separate units, it is also applicable where, as here, a party seeks to divide a historical unit containing multiple classifications into separate, classification-based units. See *Sunoco, Inc.*, 347 NLRB 421, 424 (2006).

Applying these principles to the particular circumstances of this case, we find that there have been recent and substantial organizational changes in the Employers' operations. In October 2015, AMR Holdco, AMR of Maricopa's parent company, acquired the other two Employers, and since then it has centralized several key personnel functions (including human resources, labor relations, and payroll), restructured managerial and supervisory authority to provide more separate oversight of EMS and IFT operations, instituted a common dispatch center for all three Employers, and created two stations at which IFT employees of all three Employers start and end their shifts and perform various logistical tasks (including vehicle servicing and maintenance, drug checkouts, and uniform services).

The remaining question is whether these recent organizational changes have rendered the three separate units inappropriate under normal standards of unit appropriateness. This inquiry requires application of the Board's traditional community-of-interest test,[6] rather than accretion analysis, to determine whether the changes have rendered the three units inappropriate. See

[6] See, e.g., *United Operations, Inc.*, 338 NLRB 123, 123 (2002).

Rock-Tenn, supra at 773 (citing changes that have "negate[d] any community of interest that may have existed previously among" unit employees); *Sunoco*, supra at 424 (phrasing *Rock-Tenn* inquiry as "whether the Employer's restructuring resulted in significant organizational changes that offset the community of interest previously existing among [the classifications at issue]").

We therefore reinstate the UC petition and remand it to the Regional Director for further consideration consistent with this decision. In applying the community-of-interest factors to determine whether the three units remain appropriate, the Regional Director shall be mindful that many existing distinctions among the three units have resulted from collective bargaining and that such differences should be accorded less weight in a community-of-interest analysis.[7] If the Regional Director concludes that the recent and substantial changes have rendered the existing units inappropriate, he shall proceed to consider whether the Employers' proposed separate EMS and IFT units or other alternative units would be appropriate.[8]

Accordingly, this case is remanded to the Regional Director for further appropriate action consistent with this Decision, including reopening the record, if necessary, and the issuance of a Supplemental Decision.[9]

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[7] Cf. *Public Service Co. of Colorado*, 365 NLRB No. 104, slip op. at 1 fn. 4 (2017) (in self-determination context, stating the differences in employment terms do not mandate exclusion and may reasonably be expected where they are the result of collective bargaining); *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1273 fn. 12 (2005) (then-Member Liebman, concurring) (in accretion context, stating that disparity in terms and conditions resulting from collective bargaining should not be a separate basis for excluding employees from unit who would otherwise meet accretion standard); *Oxford Chemicals, Inc.*, 286 NLRB 187, 188 fn. 5 (1987) (excluding employee from a unit based on wage and benefit disparities due to collective bargaining would be "a patent form of circular reasoning").

[8] In clarifying historical units, including under *Rock-Tenn*, the Board can consider unit configurations beyond those proposed by the petition. See *Lennox Industries*, supra at 1238.

[9] If the Regional Director concludes that the existing units are inappropriate, after he has determined what unit or units are now appropriate he shall, in light of that determination, reconsider his finding that the UC petition was barred by the contracts in effect at the time the

ORDER

Case 28-UC-223664 is reinstated and the case is remanded to the Regional Director for further action consistent with this Decision.

JOHN F. RING,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
WILLIAM J. EMANUEL,	MEMBER

Dated, Washington, D.C., July 10, 2020.

petition was filed, and in doing so shall consider the effect of the subsequent expiration of two of those contracts.

In addition, we are unable to discern the Regional Director's basis for apparently finding that the principles of multiemployer bargaining units preclude the UC petition. On remand, if the Regional Director finds that the existing units are inappropriate, he shall—at minimum—provide the parties with further opportunity to state their positions on this issue and provide a fuller explanation for why and how these principles apply here.